



Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member

**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

DECISION - BOARD OF APPEALS CASE NO. 01-18

APPLICANT:
Michael Hansen

LOCATION OF PROPERTY INVOLVED:

11 Boulder Trail
Walpole Assessors Lot No. 004005012, Rural Residence Zoning District

APPLICATION:

A **Special Permit** under Section 5-B.3(n) of the Zoning Bylaw to allow the garaging or maintaining of four (4) automobiles in a detached one-family residential dwelling, located at 11 Boulder Trail, Walpole, MA 02081, Zoning District Residence.

On March 7, 2018 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit** requested.

The following members were present and voting:

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
John Lee, Associate Member

VOTE OF THE BOARD:

A motion was made by Craig Hiltz and seconded by Susanne Murphy to grant the Special Permit under Section 5-B.3(n) of the Zoning Bylaw to allow the garaging or maintaining of four (4) automobiles in a detached one-family residential dwelling, located at 11 Boulder Trail, Walpole, MA 02081, Zoning District Residence.

The vote was 5-0-0 in favor (Zuker, Hiltz, Fitzgerald, Murphy, Coffey voting); therefore, the Special Permit under Section 5-B.3(n) is hereby granted subject to the following conditions:

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CONDITIONS:

1. There shall be no additional relief granted.
2. Work will be constructed according to the plans presented at the Public Hearing on March 7, 2018, "Plot Plan of Land 11 Boulder Trail, Walpole, MA" dated December 1, 2017 by KLIM Land Surveying, Inc.; " #5 Construction Plans" November 1, 2017 by National Design & Drafting (Revised and approved 11/2/17); " #6 Construction Plans" November 1, 2017 by National Design & Drafting (Revised and approved 11/2/17)
3. Plans shall comply with impervious coverage in Section 12 of the Zoning bylaws as stated on plan certified by an engineer.
4. Plans shall comply with water recharge requirements in Section 12 of the Zoning bylaws.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.3(n). to allow the garaging or maintaining of four (4) automobiles in a detached one-family residential dwelling, located in the Zoning District Residence. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS:

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

According to Section 5-B.3(n) of the Bylaw, the special permit may be granted provided the relief is granted in connection with a permitted main use on the same premises except in the case of an agricultural use. The requested relief is in connection with a permitted main use of the premises (i.e., detached single-family residence) and, therefore, the Board finds this condition is satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The proposed use of the additional garaging is in connection with a residential in use and, therefore, there shall not be any vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood. Thus, the Board finds that this condition is met.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The proposed use of the additional garaging is in connection with a large single family home, and therefore shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood. Thus, the Board finds that this condition is met.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application, the single-family dwelling conforms to the dimensional requirements of the Zoning Bylaw. As this house is a residential use, there is no buffer zone required. Therefore, the Board finds that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

Due to the proposed use of the garage in connection with a residential use, it does not impose fire, explosion, emission of wastes or other causes. Thus, the Board finds this condition satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

Due to the proposed use of the garage in connection with a residential use, it will not create such noise, vibration, dust, heat, smoke, fumes, odor, glare of other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Thus, the Board finds this condition satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The proposed use of the garage will not adversely affect the character of the immediate neighborhood since the relief is residential in nature, like the character of the neighborhood. Additionally, the size of the lot for 11 Boulder Trail is one that easily accommodates additional garage parking. Thus, the Board finds this condition satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The additional garage parking in connection with a single family residential use, particularly in light of the size of the home a lot, is not incompatible with the purpose of the Bylaw.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination

of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

RF/am

cc: Town Clerk Engineering Planning Board Applicant
Board of Selectmen Building Inspector Conservation Commission Abutters

This decision was made on March 7, 2018 and filed with the Town Clerk on March 19, 2018.